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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

GARRISON FICKENWORTH,

Defendant and Appellant.

C088071

(Super. Ct. No. 18HC00423)

Appointed counsel for defendant Garrison Fickenworth asked this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). Finding no arguable error that would result in a disposition more favorable to defendant, we will affirm the judgment.

I

Several days after the victim discovered his car was missing, defendant was found driving the car in a condition that proved it had been stolen by defendant or someone else. (*People v. Fickenworth* (Nov. 14, 2017, C082692) [nonpub. opn.], p. 2 (*Fickenworth*)).¹ Defendant had previously been convicted of the same offense on

¹ We judicially notice our prior opinion. (Evid. Code, §§ 452, subd. (c), 459, subd. (a).)

almost identical facts. (*Id.* at pp. 2-3.) A jury convicted him of unlawfully taking or driving a vehicle (count 1) and of unlawfully buying or receiving a stolen vehicle (count 2). (*Id.* at p. 1.) Finding that defendant had a prior strike conviction and three prior prison terms, the trial court sentenced him to 11 years in state prison. (*Ibid.*) This court affirmed the judgment. (*Id.* at p. 2.)

On August 3, 2018, defendant filed a pro se petition for writ of habeas corpus in the trial court, attaching numerous exhibits. He claimed he was entitled to the reduction of his conviction to a misdemeanor under Proposition 47 because documentary evidence attached to the petition proved the value of the stolen car was between \$100 and \$500. The trial court construed the habeas petition as a petition for statutory relief under Penal Code section 1170.18 and denied it on the merits, relying on the California Supreme Court's decision in *People v. Page* (2017) 3 Cal.5th 1175, and this court's decision in defendant's prior appeal. In *Page*, the Supreme Court held that a defendant seeking resentencing for a Vehicle Code section 10851 conviction has the burden to establish that the conviction was based on theft of the vehicle and not posttheft driving. (*Page*, at p. 1188.) But as this court explained in defendant's prior appeal, defendant was found driving the car days after its original theft under circumstances indicating he knew it was stolen, making the driving a separate and distinct violation. (*Fickenworth, supra*, C082692, at p. 4.) The trial court ruled that on this record, defendant was not entitled to Proposition 47 relief.

Defendant appealed from the order denying his petition.

II

Appointed counsel filed an opening brief setting forth the facts of the case and asking this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing the opening brief. More than 30 days elapsed and we received no communication from defendant.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The order denying defendant's petition is affirmed.

MAURO, J.

We concur:

/S/

RAYE, P. J.

/S/
ROBIE, J.